

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

IN RE: ARCHER, DARRELL,) CASE NO. 14-15254
ARCHER, ARLENE.)
DEBTOR.) Chapter 7

**MOTION TO AVOID JUDICIAL LIEN OF CAPITAL ONE BANK ON HOMESTEAD
WITH NOTICE OF OPPORTUNITY TO BE HEARD**

COME NOW, DARRELL and ARLENE ARCHER, Debtors herein, by and
through counsel, James E. Palinkas, and show the Court as follows:

1. That the debtors filed a petition for relief under chapter 7 of the Bankruptcy Code on December 11, 2014 in case number 14-15254 in the Western District of Oklahoma.
2. That this Court has jurisdiction to hear this matter under 28 U.S.C. ' 1334.
3. That on September 27, 2011, Capital One Bank (USA) obtained a judgment against the debtor/spouse in case No. CS-2011-534 in the District Court of Pottawatomie County Oklahoma in the amount of \$ 4,792.45, with costs, attached.
4. That on the 25th day of October, 2011, Capital One Bank (USA). c/o Love, Beal & Nixon, P.C., obtained a judgment lien against the Debtors' homestead which is recorded in Instrument No. 201100015954 in Pottawatomie County, Oklahoma in the above styled and numbered case. The debtor's homestead consists of a home located at: 206 S. 5th., Tecumseh, Oklahoma, further described as:

All Interest = (\$12,000.00) Lots one, two, & three (1,2&3), Block sixty-three (63), to the City of Tecumseh, Pottawatomie County, Oklahoma, According to the recorded Plat Thereof.
5. Pursuant to 11 U.S.C. ' 522(b)(1) Oklahoma has opted out of the federal exemptions

and reserves the protections of 31 O.S. '1 and Article 2 of the Oklahoma Constitution.

6. Creditor's claim of a security interest against the Debtor/spouse impairs the exemption to which the debtor & the debtor/spouse are entitled for such homestead under 31 O.S. Sec.1 and Article 2 of the Oklahoma Constitution and that said lien impairs the peaceful use and enjoyment of the homestead by the debtor & debtor/spouse.
7. In addition, the judgment lien is for a judgment against the Debtor/spouse, only, and not the Debtor. Therefore, the lien impairs the exemption interest of both the debtor, who is not a judgment debtor and the debtor/spouse.

WHEREFORE, the debtors respectfully requests that the Court Order that creditor's lien on debtors' homestead be avoided upon Discharge pursuant to 11 U.S.C. '522(f) and for all other relief to which the debtor may be entitled.

/s/ James E. Palinkas
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NOTICE OF OPPORTUNITY FOR HEARING

Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document. If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, Oklahoma 73102, no later than 14 days from the date of filing of this request for relief. You should also mail a file-stamped copy of your response or objection to the undersigned Creditor/Creditor's attorney [and others who are required to be served] and file a certificate of service with the Court.

If no response or objection is timely filed, the Court may grant the requested relief without a hearing or further notice. **The 14 day period includes the 3 days allowed for mailing provided for in Rule 9006(f) Fed.R.Bankr.Pro.**

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Motion to Avoid Judicial Lien on Debtors Homestead has been mailed, postage prepaid, by first-class, U.S. mail, or sent by electronic notice to:

Capital One Bank (USA), Attn: General Correspondence, PO Box 30285, Salt Lake City, UT 84130-0285;

Capital One Bank, PO 60599, City of Industry, CA 91716-5099;

The creditor, Capital One Bank (USA). c/o William L. Nixon, Jr., Attorney for Plaintiff, LOVE, BEAL & NIXON, P.C, P.O. Box 32738, OKC, OK 73123;

Corporate Service Company, Registered Agent for Capital One Agency, LLC, 115 S.W. 89th St., OKC, OK 73139; and,

Capital One Auto Finance, c/o Oklahoma Secretary of State, 2300 N. Lincoln Blvd. Ste. 10, OKC, OK 73105.

/s/ James E. Palinkas
JAMES E. PALINKAS, OBA #15037